

REPRESENTATIVE FOR PETITIONERS:

Margaret Lee Grimm, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Brian Cusimano, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Kurt Bentley & Margaret Lee)	Petition No.:	17-009-14-1-5-00040-16
Grimm,)		
)	Parcel No.:	17-10-02-200-005.000-009
Petitioners,)		
)		
vs.)	DeKalb County	
)		
DeKalb County Assessor,)	Jackson Township	
)		
Respondent.)	2014 Assessment Year	

Appeal from the Final Determination of the
DeKalb County Property Tax Assessment Board of Appeals

December 13, 2016

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. The Respondent had the burden to prove the subject property's March 1, 2014, assessment was correct. Did the Respondent prove the 2014 assessment was correct?

PROCEDURAL HISTORY

2. The Petitioners initiated their 2014 appeal with the DeKalb County Assessor on August 18, 2014. On November 30, 2015, the DeKalb County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board.
3. On September 14, 2016, the Board's administrative law judge (ALJ), Joseph Stanford, held a hearing on the petition.¹ Neither the Board nor the ALJ inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Margaret Lee Grimm, attorney, appeared *pro se* and was sworn as a witness. Attorney Brain Cusimano appeared for the Respondent.² William Bruce Scranage and Ronald Lee Matthews were sworn as witnesses for the Petitioners. County Assessor Sheila Stonebraker, appraiser John Good, and Aaron Suozzi were sworn as witnesses for the Respondent.
5. The Petitioners offered the following exhibits:

Petitioners Exhibit 1:	2014 Notice of Assessment (Form 11),
Petitioners Exhibit 2:	Petitioners' notice of 2014 appeal,
Petitioners Exhibit 3:	PTABOA's Notice of Hearing on Appeal (Form 114) for 2014 appeal,
Petitioners Exhibit 4:	2014 Notice of Final Assessment Determination (Form 115),
Petitioners Exhibit 5:	2014 Form 131,
Petitioners Exhibit 6:	2015 Form 11,
Petitioners Exhibit 7:	Petitioners' notice of 2015 appeal,
Petitioners Exhibit 8:	2015 Form 114,
Petitioners Exhibit 9:	2016 Form 11,
Petitioners Exhibit 10:	Petitioners' notice of 2016 appeal,
Petitioners Exhibit 11:	"Note RE Filings with the IBTR" by attorney Margaret Grimm,
Petitioners Exhibit 12:	Appraisal of the subject property completed by Michael W. Roach with an effective date of August 3, 2011,
Petitioners Exhibit 13:	"Well and Septic Average Costs,"

¹ This hearing was previously set for May 19, 2016, but the Petitioners requested a continuance because they stated a Notice of Hearing was not received. The Board reset the hearing for September 14, 2016.

² Attorney Heather Scheel was present but did not participate in the hearing

- Petitioners Exhibit 14: Land study prepared by Aaron Suozzi with property record cards,
- Petitioners Exhibit 15: Subject property's 2013 property record card,
- Petitioners Exhibit 16: Subject property's 2014 property record card,
- Petitioners Exhibit 17: "Note RE March 25, 2014, Burden-Shifting Language."

6. The Respondent offered the following exhibit:

- Respondent Exhibit A: Appraisal of the subject property completed by John Good with an effective date of March 1, 2014,
- Respondent Exhibit A-1: Subject property record card.

7. The following additional items are recognized as part of the record:

- Board Exhibit A: Form 131 with attachments,
- Board Exhibit B: Hearing notice dated April 28, 2016,
- Board Exhibit C: Hearing sign-in sheet,
- Board Exhibit D: Notice of Appearance for Marilyn S. Meighen, Brian A. Cusimano, and Heather Ann Scheel,
- Board Exhibit E: Various correspondence from both parties regarding witness and exhibit lists.

8. The property under appeal is a single family residence located at 4315 County Road 50 in Auburn.

9. The PTABOA determined a total assessment of \$194,300 (land \$64,800 and improvements \$129,500).

10. At the hearing, the Petitioners requested a total assessment of \$169,500 (land \$40,000 and improvements \$129,500).

JURISDICTIONAL FRAMEWORK

11. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

OBJECTIONS

12. Mr. Cusimano objected to all of the Petitioners' exhibits and accompanying testimony. Regarding the exhibits, Mr. Cusimano initially argued the Petitioners failed to exchange their exhibits five days prior to the hearing as required by 52 IAC 2-7-1(b)(1). Eventually, he conceded the Petitioners properly submitted the first eight pages of their appraisal, Petitioners' Exhibit 12, at the PTABOA hearing, but maintained the remaining pages should be excluded as they were not properly exchange. Thus, Mr. Cusimano amended his original objection to only include the previously mentioned pages of Petitioners' Exhibit 12 and Petitioners' Exhibit 6, 7, 8, 9 and 10 as they were not properly exchanged and because they are "irrelevant as they refer to assessments other than March 1, 2014." The Petitioners responded to the exchange aspect of the objection by stating they were "under the impression as far as document exchange, that we all had everything." In response to the relevancy aspect of the objection, the Petitioners viewed "the exhibits as documentation of a continuing appeal." The ALJ took the objections under advisement.

13. Petitioners' Exhibits 6, 7, 8, 9 and 10 consist mainly of assessment notices issued by the Respondent and resulting appeals filed by the Petitioners with the Respondent for 2015 and 2016. Granted, these exhibits are mainly procedural in nature and fail to prove the subject property's market value-in-use as of March 1, 2014, but the Respondent has already seen these documents. As such, the Board cannot find any harm in the Petitioners failure to exchange them prior to the hearing. As to the relevancy aspect of the objection, the Respondent's objection goes to the weight of the exhibits rather than to admissibility. As such, the Respondent's objections are overruled and the exhibits are admitted.

14. As for pages 9-16 of the Petitioners' Exhibit 12, consisting mainly of photographs and a sketch of the property and a map indicating the purportedly comparable properties locations, this portion of the exhibit does little to prove or disprove the appraiser's work or his indicated value. Nonetheless, the Petitioners failed to timely exchange this portion

of the exhibit. As such, the Respondent's objection to pages 9-16 of Petitioners' Exhibit 12 is sustained and these pages are excluded.

15. Mr. Cusimano objected to Mrs. Grimm's testimony regarding the appraisal after she "forgot" to refer to it in her direct testimony, but "only remembered after cross-examination." Thus, he argued the testimony was outside the scope of his cross-examination. In response, Mrs. Grimm argued that, while she "may have stumbled procedurally," the purpose of the hearing is "to get a full and fair hearing." The ALJ took the objection under advisement.
16. Granted, Mrs. Grimm is a licensed attorney and should be fully aware of procedural matters, but here the Board is in agreement with her argument. The ALJ allowed Mr. Cusimano to cross-examine Mrs. Grimm regarding her testimony related to the appraisal; therefore, the Respondent suffered no harm. Here the Board will promote substance over form and overrule the Respondent's objection allowing Mrs. Grimm's testimony.
17. Finally, during Mrs. Grimm's re-direct of her witness, Mr. Matthews, Mr. Cusimano objected to a portion of his testimony arguing that it was outside the scope of his cross-examination of Mr. Matthews. Specifically, Mr. Cusimano argued that Mr. Matthews' reference to an "extraordinary assumption" had not been previously addressed. Mrs. Grimm contended that Mr. Matthews' testimony "dealt directly with Mr. Good's valuation." Again, the ALJ took the objection under advisement.
18. Mr. Matthews' reference to Mr. Good's "extraordinary assumptions" was fairly specific. In his appraisal, Mr. Good's fifth assumption states, "I am assuming the description, condition and measurements of the home as included in this report are accurate as I was not provided access to the interior of the home." *Resp't Ex. A* at 9. Further, Mr. Good, while not specifically referring to it as an "extraordinary assumption," testified to that fact.
19. The objected to testimony from Mr. Matthews' dealt specifically with that assumption. Mr. Matthews testified as follows:

“[H]e says in here that he is relying on this assumption to get where he got to, probably based on the fact that he didn’t get into the buildings. What else could he do? Everybody does that, and that’s standard...”

20. As the above testimony from Mr. Matthews was already made part of the record, both through Mr. Good’s appraisal report and through his direct testimony, Mr. Cusimano’s objection is moot, and therefore overruled.

PETITIONERS’ CONTENTIONS

21. The property’s land assessment is too high. The Petitioners are not appealing the assessment attributable to the improvements as “no taxpayer in their right mind is going to challenge the structures.” But according to the Respondent’s own appraisal, the land assessment should be reduced to \$40,000. *Grimm argument (referencing Resp’t Ex. A at 5).*
22. The increase in the land assessment from 2013 to 2014 was “extravagant.” Specifically, the land assessment increased from \$35,900 in 2013 to \$64,900 in 2014. *Grimm argument; Scranage testimony.*
23. The PTABOA erred in denying the Petitioners’ appeal due to lack of evidence, because “the burden was not on the Petitioners to prove the value.” Further, the purportedly comparable sales utilized by the Respondent are not comparable to the subject property. The property under appeal is “a little farm house” along a “dirt road” unlike the properties utilized by the Respondent. A typical buyer would not find the property “appealing.” *Grimm argument.*
24. The Petitioners’ witness, Mr. Ronald Lee Matthews, a licensed appraiser, agrees the Respondent’s appraiser, Mr. John Good, developed an accurate land value and that Mr. Good is “pretty honorable.” Mr. Matthews “did not concentrate much on the buildings” because he was specifically asked to look at the land value. Yet, he noted the structures, while well-maintained and renovated on the outside, looked “tired” on the inside. Further, Mr. Matthews noted that Mr. Good made an “extraordinary assumption” in his

appraisal regarding the condition of the inside of the buildings as he did not gain access to the interior. Finally, Mr. Matthews contends that Mr. Good's estimates for the well, septic system, and driveway are "likely overstated." *Matthews testimony*.

RESPONDENT'S CONTENTIONS

25. The subject property is currently under-assessed. Acknowledging that she had the burden to prove the property's value, the Respondent offered an appraisal completed by Mr. Good, a licensed appraiser. The appraisal, with an effective date of March 1, 2014, indicates the assessment should be increased to \$215,000. *Cusimano argument; Good testimony; Resp't Ex. A.*
26. Mr. Good relied mainly on the sales-comparison approach and testified in extensive detail as to how he applied that approach. First, he identified nearly 30 sales that occurred in 2013 and 2014. He narrowed those down to six that were most representative of the subject property. None were "ideal." Mr. Good admitted that it is difficult to find comparable properties for older homes that have been renovated because they do not often come up for sale. Nevertheless, he found and utilized properties with similar acreage, similar style and appeal of home within the competitive market. *Good testimony; Resp't Ex. A.*
27. Mr. Good adjusted for differences between his comparable properties and the subject property. In doing so, he attempted to "bracket" each line-item adjustment. In other words, Mr. Good attempted to find properties that exhibit "inferior and superior qualities." For example, he attempted to find properties that are older and properties that are newer. For site size, he examined both larger and smaller lots. For condition, he sought "better" and "worse" properties. By doing this, he is able to increase the overall reliability of his analysis. For this appraisal, he was successful in "bracketing" every line item except the value of the outbuildings. *Good testimony; Resp't Ex. A.*
28. The adjustments were specifically calculated, generally either via paired-sales analyses or linear regression analyses. For example, he applied a linear regression analysis to

compute a surplus land adjustment of \$2,000 per acre. He used a paired-sales analysis to calculate a \$1,500 per bedroom adjustment. He applied similar methods for other adjustments. The indicated value from the sales-comparison approach was \$215,000.

Good testimony; Resp't Ex A.

29. As is often the case, Mr. Good appraised the property without being granted access to the interior. The exterior of the home and outbuildings appeared to be “renovated and well-maintained, without any appearance of deferred maintenance.” Mr. Good “assumed” the interior and the overall condition of the property was average. *Good testimony; Resp't Ex. A.*
30. While he did not rely on it, Mr. Good also developed the cost approach. The total value indicated by the cost approach was \$222,316. This total included a land value of \$40,000. According to Mr. Good, however, appraisers do not value land the same way as assessors. Appraisers only value bare, undeveloped land, which does not depreciate. Assessors, on the other hand, include the cost of wells, septic systems, driveways, and other similar improvements that appraisers account for as improvements. Thus, comparing an appraiser’s land value to an assessor’s land value is essentially “like comparing apples and oranges.” *Good testimony; Cusimano argument; Resp't Ex. A.*
31. The most relevant evidence is the property’s overall value. That is the value the Respondent had the burden to prove. She met that burden and the Petitioners’ failed to rebut her evidence. The Respondent proved, via her appraisal, the total assessment should be increased to \$215,000. *Cusimano argument (citing Kooshtard Property VIII v. White River Twp. Ass'r, 836 N.E.2d 501 (Ind. Tax Ct. 2005)).*

BURDEN OF PROOF

32. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); see also Clark v. State Bd. of Tax*

Comm'rs, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.

33. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
34. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and is applicable to all appeals pending before the Board.
35. Here, the parties agree the assessed value of the subject property increased by more than 5% from 2013 to 2014. The Respondent conceded the assessment increased from \$178,500 in 2013 to \$194,300 in 2014. While the Petitioners contend their appeal was of the land assessment only, neither party raised the argument that the burden-shifting statute should be applied only to the increase in the land assessment. On several occasions, the Board has addressed whether Ind. Code § 6-1.1-15-17.2, can be applied piecemeal to only land assessments or only improvement assessments, or whether that statute must be applied to the whole property. The Board has repeatedly held that the statute does not expressly contemplate piecemeal approaches, but was intended to apply

to an entire “economic unit.” See *Vern R. Grabbe v. Carroll County Assessor*, Ind. Bd. of Tax Rev. Pet. Nos. 08-002-10-1-1-00001, et al. (May 10, 2012); *Rebecca Budreau v. White County Assessor*, Ind. Bd. of Tax Rev. Pet. Nos. 91-020-08-1-5-00058, et al. (July 30, 2012); *Waterford Dev. Corp. v. Elkhart County Assessor*, Ind. Bd. of Tax Rev. Pet. Nos. 20-015-08-1-4-00241, et al. (September 25, 2012); *Mac’s Convenience Stores, LLC v. Hamilton County Assessor*, Ind. Bd. of Tax Rev. Pet. No. 29-006-12-1-4-02050 (November 14, 2014). Thus, according to the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 the Respondent has the burden to prove the 2014 assessment is correct.

ANALYSIS

36. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales-comparison, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id.* Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
37. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. See *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); see also *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2014 assessment, the valuation date was March 1, 2014. See Ind. Code § 6-1.1-4-4.5(f).
38. Here, the Petitioners are only disputing the 2014 land assessment. They agree with the assessment of the improvements. While seeking to retain the improvement assessment, they seek to have the land assessment lowered to the \$40,000 indicated in the Respondent’s appraisal.

39. As previously discussed, neither party argued the burden-shifting statute should be applied piecemeal. The Respondent has the burden to prove the 2014 assessment is correct. To that end, the Respondent offered Mr. Good's appraisal, estimating the property's value at \$215,000 as of March 1, 2014.
40. The overriding purpose of real property assessment in Indiana is to determine the market value-in-use of the entire property. Indeed, the Manual defines true tax value as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2. Further, "[t]rue tax value may be considered as the price that would induce the owner to sell the real property, and the price at which the buyer would purchase the real property for a continuation of use of the property for its current use." *Id.* Here, there is a home and other improvements situated on the land. Thus, the land could not be sold separately.
41. The Respondent's appraisal values the entire property. The Board cannot ignore relevant valuation evidence. *See* 50 IAC 2.4-1-1(c) (stating that "the validity of the assessment shall be evaluated on the basis of *all relevant evidence presented*. Whether an assessment is correct shall be determined on the basis of whether, in light of the relevant evidence, it reflects the property's 'True Tax Value.'"(emphasis added)).
42. The Respondent argues she made a prima facie case by presenting Mr. Good's appraisal along with his accompanying testimony. As the Board has previously held, an appraisal performed in conformance with generally recognized appraisal principles is often the preferred way to establish a prima facie case. *Meridian Towers*, 805 N.E.2d at 479. Additionally, the Petitioners failed to rebut the presumption that the entire parcel forms the economic unit. *See Charles E. Koziarz v. Marshall Co. Ass'r, Ind. Bd. of Tax Rev.* Pet. Nos. 50-017-12-1-5-00012, et al. (May 22, 2014). Accordingly, the burden shifts to the Petitioners to impeach or rebut the Respondent's evidence of value.
43. While the Petitioners offered their own appraisal, it lacks probative value. The appraisal, by Michael Roach, a certified appraiser, estimates the value as of August 3, 2011. This

date is nearly three years prior to the relevant valuation date of March 1, 2014. Additionally, the Petitioners failed to relate their evidence to the relevant valuation date. The evidence before the Board must indicate the value as of the valuation date. *Long*, 821 N.E.2d at 471; *Monroe Co. Ass'r v. Kooshtard Properties I, LLC*, 38 N.E.3d 754, 757 (Ind. Tax Ct. 2015).

44. The Petitioners made an attempt to impeach Mr. Good's appraisal, but their attempt fell short. Their witness, Mr. Matthews, indicated Mr. Good made an "extraordinary assumption" that the property is in average condition, based on the fact Mr. Good was not granted access to the interior of the property. But Mr. Matthews' mere speculation is not enough to impeach the appraisal. In fact, the Petitioners failed to offer any evidence that either Mr. Good's assumption or his value conclusion were incorrect.
45. The Petitioners also argued the purportedly comparable properties utilized by the Respondent are not comparable to the subject property. An appraiser considers the size, age, condition, and type of structure, among many other things. In choosing his comparable properties, Mr. Good considered the similarities in these factors made up for the fact that they might not be "identical" to the subject property. In fact, Mr. Good admitted none of his comparable properties were "ideal." Mr. Good admitted it is difficult to find comparable properties "for older homes that have been renovated as they do not often come up for sale." Nevertheless, he found and utilized properties with similar acreage, similar style and appeal of home within the competitive market and made adjustments. As a certified, licensed appraiser, Mr. Good is well-qualified to make that determination. Moreover, the Petitioners failed to offer any evidence as to how Mr. Good's choice of "wrong" comparable sales affected his estimated value. Thus, the Petitioners failed to rebut or impeach the Respondent's appraisal.
46. Finally, the parties offered testimony and argument as to whether Mr. Good valued the "same things" as the Assessor in his estimate of land value, and whether the costs of those items were reasonable. As the Board has already concluded, the goal of Indiana's

assessment system is to value the entire property, or economic unit. As such, these arguments are moot.

47. The Board finds that Mr. Good's appraisal and detailed supporting testimony provides the most accurate market value-in-use for the subject property. While the Board is reluctant to increase assessments, the Petitioners were aware that their assessment could increase as a result of their appeal. Accordingly, the Board orders the subject property's 2014 total assessment be increased to \$215,000.

SUMMARY OF FINAL DETERMINATION

48. The subject property's 2014 total assessment must be changed to \$215,000.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.